IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WA.No. 2160 of 2006(A)

AGAINST THE JUDGEMENT/ORDER IN WPC.7181/2006 Dated 12/07/2006
.....

APPELLANTS: RESPONDENTS 1 AND 2 IN THE WRIT PETITION
----

1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER
ADVOCATE GENERAL

RESPONDENTS: PETITIONERS & 3RD RESPONDENT IN THE WP(C)
----

1. MUHAMMED SHAH A.,
IN-AM MANZIL, PERUMATHURA P.O.,
THIRUVANANTHAPURAM.

2. MUHAMMED ISMAIL M.,
MANIKKOTH HOUSE, AVILORA P.O.,
KODUVALLY, KANNUR DISTRICT.

3. MUHAMMED SIRAJUDEEN T.,
"KOOFIYA", P.O., PERUNGATHOOR,
KANNUR DISTRICT.

4. MUSTHAFA P.M., 13/412 B, POOTHARA,
CHULLIKKAL, COCHIN, ERNAKULAM DISTRICT.

**5. THE KERALA PUBLIC SERVICE COMMISSION,
REP. BY SECRETARY, KERALA PUBLIC SERVICE
COMMISSION, PATTOM, THIRUVANANTHAPURAM.**

**BY ADV. SRI.KALEESWARAM RAJ FOR R1 TO R4
ADV.SRI.P.C.SASIDHARAN FOR R5
SRI.C.P.SUDHAKARA PRASAD.**

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON 21/03/2007 DELIVERED THE FOLLOWING:

WA NO.2160/2006

ORDER IN I.A.127 OF 2007 IN WA NO.2160 OF 2006

DISMISSED

21/03/2007

SD/-
P.R.RAMAN, JUDGE

SD/-

ANTONY DOMINIC, JUDGE

//TRUE COPY//

P.R.RAMAN & ANTONY DOMINIC, JJ.
==========
W.A NO. 2160 OF 2006
==========
Dated this the 21st day of March, 2007

J U D G M E N T

Antony Dominic, J.

This appeal is filed against the interim order dated 12th July 2006, passed by the learned Single Judge in WP(C) No.7181/2006. By the said interim order, the learned Judge directed the appellants to issue orders appointing eligible candidates from Ext.P3 ranked list to the available vacancies in the post of Lecturer in Arabic provisionally and subject to further orders to be passed in the writ petition. It is challenging the correctness of this order that the State of Kerala and the Director of Collegiate Education, respondents 1 and 2 in the writ petition, have come up in appeal.

2. The writ petition was filed by the respondents 1 to 4 herein seeking inter alia an order requiring the Kerala Public Service Commission, the third respondent in the writ petition, to advise the candidates from Ext.P3 ranklist forthwith. There are other substantial prayers sought in the writ petition which are not relevant for the disposal of this appeal and hence are not referred

to by us. Respondents 1 to 4 had applied in response to Exhibit P1 vacancy notification issued by the Public Service Commission inviting applications for the post of Lecturer in Arabic. Being eligible candidates, they were considered for the post and in Ext.P3 ranklist that was eventually published by the Kerala Public Service Commission, they were assigned rank numbers 23, 52, 17 and 13 respectively. They filed the writ petition complaining that despite their inclusion in the ranklist and the availability of vacancies, they were not advised for appointment. According to them the State Government was awaiting amendment to Rule 14 and 15 of the Kerala State and Subordinate Services Rules (K.S. & S.S.R).

3. The learned Single Judge, took note of the circumstance that admittedly the aforesaid respondents were included in the ranklist and that if a fresh selection of candidates belonging to other communities with requisite qualification in Arabic is to be made, there is going to be an inevitable delay leading to a situation where the vacancies will remain unfilled for a long time. In addition to this, the fact that in the meanwhile

the list itself might expire, resulting in respondents 1 to 4 loosing all chances of appointment was also taken note of. The learned Single Judge, in the peculiar facts of the case, passed the aforesaid order directing that orders appointing eligible candidates from the ranked list to be issued against available vacancies on a provisional basis and that too subject to the result of the writ petition.

4. Appearing for the appellants, the learned Advocate General argued that the post of Arabic Lecturer can be filled up only in terms of Rule 15 of the K.S. & S.S.R. According to him, the situation as prevailing now is that the appointment in terms of Rule 15 is not possible as the ranked list contains name of only Muslim candidates and on account of this, recourse will have to be made to temporary appointment as per Rule 9 of the K.S. & S.S.R. He would further contend that appointment under Rule 9 of K.S. & S.S.R. is possible only by selecting candidates who are sponsored by Employment Exchange and that, for this purpose, the list prepared by the Kerala Public Service Commission cannot be pressed into service.

5. On the other hand, the counsel for respondents 1 to 4 would argue that it was taking note of the peculiar circumstances prevailing, that the learned Single Judge passed the order. According to him, eligible candidates belonging to communities other than Muslim, are not available to make appointments to the post of Lecturer in Arabic and therefore even if requisition is made to the Employment Exchanges in the State, that is going to be an exercise in futility. According to counsel, the end result of the whole exercise will be that on the one hand the respondents 1 to 4 will lose their opportunity to get employment and on the other hand the vacancies will remain unfilled for years to come. Counsel would submit that this was the situation that is sought to be prevented by the learned Single Judge by directing that appointments be made from the ranklist on a provisional basis and that too subject to the result of the writ petition. It is the specific contention of the petitioners that but for the amendment that was introduced in the meanwhile, they would have been advised for appointment. On this basis, counsel submits that the interim order needs to be sustained and that there are no

circumstances warranting interference in appeal.

6. We have considered the submission made by both sides. Admittedly there are vacancies in existence and Exhibit P3 ranklist prepared by the Public Service Commission, a Constitutional body, is still current and is available. It is also a fact that it was subsequent to the publication of Ext.P3 ranked list that Rule 14 and 15 of K.S. & S.S.R was amended.

7. The contention of the learned Advocate General is that if appointment is not possible under Rule 15 of the K.S & S.S.R, recourse will have to be made to Rule 9 thereof. Although we find force in the said submission, in our view, the interim order does not stand in the way of the State making appointment under Rule 9. Rule 9 provides for temporary appointments which are necessitated in the public interest, owing to an emergency situation requiring filling up of vacancies on an immediate basis. In view of the situation that is now prevailing, even if the State is to require the Employment Exchanges to sponsor candidates, fresh selection process that will ensue is going to ultimately result in delay in filling up of vacancies and that is not a desirable

situation. We have also considerable doubt about the final outcome of any such selection process. This is for the reason that the respondents 1 to 4, along with IA 56/07, have produced three documents as Exhibit R1(a), (b) and (c) evidencing that candidates other than from Muslim community satisfying the eligibility norms laid down in Ext.P1 notification are not available even on the rolls of the Employment Exchanges in the State. Such is the effect of the communications produced by the petitioners and obtained from Regional Employment Deputy Director of Kozhikode, Regional Professional and Executive Employment Exchange, Kochi and Professional and Executive Employment Office, Trivandrum. In the light of the said situation, we cannot find any fault with the interim order that is passed by the learned Single Judge.

8. The anxiety regarding the compliance with Rule 9 has also been addressed by the learned learned Single Judge by directing that the appointments need only be provisional and subject to the result of the writ petition. In view of the direction so issued by the learned Single Judge, the State is at liberty to

make it clear in the appointment orders that the appointment of the candidates will be in terms of Rule 9 (a) (i) of K.S. & S.S.R and therefore that is an added safeguard available to the State.

We do not find any good ground to interfere with the interim order passed by the learned Single Judge. Accordingly, the Writ Appeal will stand dismissed.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp